

Rajasthan High Court

Bheekha Ram vs Goma Devi And Ors. on 22 January, 1999

Equivalent citations: 1999 CriLJ 1789

Author: G Gupta

Bench: G Gupta

ORDER G.L. Gupta, J.

1. This revision by the husband has been preferred against the revisional order D/-17-3-97 passed by the learned Special Judge-cum-Addl. Sessions Judge, Bikaner whereby he set aside the order DA 22-4-95 passed by the Judicial Magistrate No. 2, Bikaner refusing maintenance to the respondents Nos. 1 to 3.

2. The short facts of the case are that Goma Devi for her and on behalf of her two minor sons filed an application under Section 125, Cr.P.C. against her husband-Bheeka Ram (petitioner in this revision) for maintenance. It was alleged that Goma Devi was married to Bheeka Ram 12-13 years ago but for some time her husband and his parents were torturing her for dowry and that she was beaten and turned out of the house and with great difficulty she was again kept by them. It was further alleged that she purchased a piece of land by selling her ornaments and with the help of her parents she constructed a house and started living there but three months before filing the application Bheekha Ram tried to kill her by burning and thereafter he is neglecting her. It was stated that Bheekha Ram earned Rs. 60/- per day by doing Mason work. It was prayed that she be allowed maintenance @ Rs. 400/- per month for herself and Rs. 250/- each for her children. In the reply, the husband denied the charge of cruelty for dowry. He also denied that he ever gave beating to Goma Devi or that he tried to kill her. He came out with the case that Goma Devi used to misbehave with his parents and, therefore, he purchased a piece of land and constructed a house for living separately but his wife continued to cause mental torture to him by abusing his parents and ignoring him. It was stated that the petitioner left his house without just cause and was not discharging her marital obligations.

3. Goma Devi entered into the witness box and examined A. W. 1 Tulchiram. In rebuttal, Bheekha Ram entered into the witness box and examined N. A. W. 2 Kaluram, N. A. W. 3 Modaram and N. A. W. 4 Sampatram. After hearing the counsel for the parties, the learned Magistrate held that the allegations of neglect by the husband were not proved. He further held that the allegations of cruelty for the dowry were also not proved. Holding that the wife left the matrimonial home without just cause, and she was not entitled to maintenance, the learned Magistrate rejected the application of Goma Devi. Goma Devi filed a revision against that order. By the impugned order the learned Addl. Sessions Judge allowed her revision and held that Goma Devi was entitled to maintenance @ Rs. 250/- per month for herself and Rs. 125/- each for her two children.

4. Mr. S. D. Vyas vehemently contended that the Addl. Sessions Judge has not properly appreciated the evidence and has committed grave error in reversing the finding of fact recorded by the Magistrate. He cited the cases of Shahzad Bano v. Sher Mohammad 1990 RCC 57, Bhanwari Bai v. Mohd. Ishaq 1984 MLR 234, Budharam Kosta v. Pitarbai 1984 MLR 62 and Raghbir Singh v. Krishna 1982 MLR 307.

5. On the other hand, Mr. G. K. Vyas urged that this Court should not interfere in there visional order as the Magistrate had not properly considered the evidence and had come to erroneous conclusion.

6. I have considered the above arguments. A reading of the order of the Magistrate shows that he had dealt with the evidence of each and every witness. It could not be pointed out by learned counsel for Smt. Goma Devi that the Magistrate had ignored some important piece of evidence appearing in favour of the wife or that there was misreading of the evidence in favour of the husband. It has to be accepted that the learned Addl. Sessions Judge has overstepped when he on reappraisal of evidence has come to a different conclusion. It is trite legal position that the jurisdiction of a revisional Court is not as that of appellate Court which is free to reach its own conclusion on evidence untrammelled by any finding entered by the trial Court. Revisional powers on the other hand belong to supervisory jurisdiction of a superior Court. While exercising revision power, the Court has to confine to the legality and propriety of the findings and also whether the subordinate Court has kept itself within the bound of its jurisdiction including the question whether the Court had failed to exercise the jurisdiction vested in it : vide *Associated Cement v. Keshvanand* AIR 1998 SC 596.

7. In the instant case, the learned Magistrate has rightly held that the respondent-wife had not been able to establish the allegations of cruelty or demand of dowry and that: on her own admission she was living in the house constructed by her husband. On the admissions of Goma Devi that for about 14 years the husband used to give his entire income to her and he was maintaining the family and that her husband was always ready and willing to keep her and her children and there was not love lost between them, the learned Magistrate was perfectly justified in holding that there was no negligence by the husband and the wife was herself responsible for the trouble in the marital relations. The learned Addl. Sessions Judge, it is obvious was influenced by the fact that the husband has filed a divorce petition in the Court of Dist. Judge, Bikaner. By this, he presumed that the husband Bheekha Ram was not willing to continue with the marital relations. In my opinion, this could not be the valid ground for interfering in the order of the learned Magistrate. The matter was to be decided on the basis of the material available on the record of the case under Section 125, Cr.P.C. The Addl. Sessions Judge has obviously erred in allowing the revision on the basis of the subsequent development of the case ignoring the admissions of the wife.

8. The right to be maintained by the husband stems from performance of marital duty. It is only when the Court inter alia comes to the finding that the wife claiming maintenance had been prevented from performing the marital duty by the husband that she could be awarded maintenance. When it is found that the wife declines to live with husband without any just cause and there is no evidence of ill-treatment by the husband, wife is not entitled to maintenance. In the instant case, it is noticed that the husband even sent a registered notice to the wife asking her to stay with him but she refused to accept the notice.

9. As already pointed out, in the revisional jurisdiction, the Court cannot be justified in reappraising the evidence and come to its own conclusion when it is not shown that the Magistrate had omitted to consider some vital evidence or had misread the evidence. The learned Addl. Sessions Judge has,

obviously exceeded his jurisdiction in reversing the finding of fact recorded by the Magistrate, without cogent reasons. Goma Devi has not been able to establish that she had been neglected by her husband. As a matter of fact she is living with her parents of her own accord. She is, therefore, not entitled for maintenance allowance for herself. However, she is entitled to maintenance allowance for her two kids who are living with her. Bheekha Ram, has not come out with the case that he was giving maintenance allowance to Goma Devi for the children. It is no fault of the children when they are living with their mother. The father is bound to provide maintenance to them.

10. Consequently, this revision is partly allowed. The order of the Addl. Sessions Judge granting maintenance to Goma Devi is set aside. The order granting maintenance to the children is upheld.